



December 30, 2021

Via Electronic Mail

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New York State Department of Financial Services
One State Street, 20th Floor
New York, NY 10004

Re: Proposed Amendment to 3 NYCRR 76: Compliance With Community Reinvestment Act Requirements

Ladies and Gentlemen:

The Bank Policy Institute¹ appreciates the opportunity to provide our comments on the proposal (the “Revised Proposal”) by the New York State Department of Financial Services (the “Department” or “NYDFS”) to amend the implementing regulations of the New York State Community Reinvestment Act (“CRA”), that the Department has proposed “to execute a newly imposed statutory obligation related to its CRA examination duties.”² Specifically, a recent amendment to BL § 28-b requires the Superintendent of Financial Services to include a new, additional criterion in its evaluation of covered institutions’ performance, specifically, the extent to which they offer and provide credit and technical assistance programs to minority- and women-owned businesses (“MWOBs”).³

BPI fully supports the goal of providing MWOBs access to credit and preventing discrimination against those businesses. The collection of data for these purposes would help to promote fair lending and help financial institutions identify and better serve the needs of small business credit applicants, including MWOBs.

However, the Consumer Financial Protection Bureau (“CFPB”) proposed a rule in September 2021 that would implement a substantially similar federal requirement that financial institutions collect and report to the Bureau demographic and other information on applications for credit for small businesses, including those that are owned by women or minorities.⁴ For several reasons, as described

¹ The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation’s leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation’s small business loans, and are an engine for financial innovation and economic growth.

² New York Banking Law (“BL”) § 28-b; New York State Department of Financial Services Proposed Amendment To 3 NYCRR 76: Compliance With Community Reinvestment Act Requirements, *available at*: [Banking Regulation Proposed Amendment to 3 NYCRR 76 - Compliance with Community Reinvestment Act Requirements](#).

³ See L.2019, c. 264, BL § 28-b(3)(a)(8)-(a)(9).

⁴ Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B), 86 Fed. Reg. 56,356 (Oct. 8, 2021) (the “CFPB NPR”).

herein, it makes little sense to layer multiple similar, yet not identical, data collection requirements on New York state-chartered institutions that are also subject to the requirements under section 1071 of the Dodd-Frank Act (“Section 1071”). Therefore, we respectfully request that the NYDFS delay this rulemaking until the Section 1071 rules are finalized and explicitly provide that compliance with the regulations promulgated under Section 1071 would constitute compliance with the NYDFS’s requirements under the proposed changes to its CRA regulations.

The CFPB proposes to require financial institutions to collect and report data regarding applications for credit for small businesses, including those that are owned by women and minorities, but not exclusively those that are owned by minorities and women. Despite similar statutory requirements that banks collect data regarding all MWOBs,⁵ the CFPB is not proposing “to require that financial institutions collect and report data regarding applications for women-owned and minority-owned businesses that are not small.”⁶ The CFPB reasons that because “most existing businesses are small businesses, covering small businesses necessarily means nearly all women-owned and minority-owned businesses will also be covered.”⁷ The NYDFS proposal would require institutions to report data on all MWOBs, including those that are not small. However, as noted by the CFPB, because most MWOBs are small business, the CFPB’s information collection requirement likely would capture the vast majority of data related to MWOBs. The CFPB solicited comments on its proposal, which are due by January 6, 2022. It then intends both to implement a final rule after considering those comments, and to give banks a period of time in which to understand the requirements and the implications of those requirements for various business units, design changes to processes, build and test systems, train employees, and implement procedures and controls to ensure compliance with the new small business data collection regime.

As a threshold matter, requiring New York banking organizations to comply with two separate, yet very similar, reporting requirements would be burdensome and complicated for both applicants and institutions. Adding one new data collection framework applicable to small business credit applications may, at least initially, be confusing and overwhelming for applicants; requesting some applicants to provide similar information for MWOBs under a *second*, separate, but not identical, collection regime would add even more confusion and burden and could deter applicants from applying for credit at all, thus undermining the purpose of the statute. Before layering different requirements onto the data collection of Section 1071, the DFS rule should specifically provide that compliance with Section 1071 is sufficient to satisfy the DFS rule’s requirements. The purpose of both Section 1071 and BL § 28-b is to assess, to a large and possibly exclusive degree, the extent to which MWOBs have access to credit. Thus, the data proposed to be collected under Section 1071 is intended to allow the CFPB – and would allow the NYDFS – to carry out the purposes of the respective relevant statutes.

The Department should allow for a sufficiently long period of time to consider whether the data collected under Section 1071 in fact enables the Department to evaluate an institution’s “record of

⁵ Compare 12 U.S.C. § 1691c-2(b) and (b)(1) (“...in the case of any application to a financial institution for credit for women-owned, minority-owned, or small business, the financial institution shall inquire whether the business is a women-owned, minority-owned, or small business”) with BL §28-b(3)(a) (“the superintendent shall take into account...the banking institution's origination of...small business or small farm or minority-and women-owned business loans.”)

⁶ CFPB NPR at 56357

⁷ *Id.*

performance of the banking institution in helping to meet the credit needs of its entire community, including . . . minority- and women-owned businesses, consistent with safe and sound operation of the banking institution” in CRA performance evaluations and the other purposes of the state statute. At such time, the NYDFS will have a much stronger empirical foundation on which to consider whether different or additional data collection requirements may be warranted when balanced with other potentially negative effects of collecting more or different data, such as those outlined above. Should the CFPB implement changes to its rules in the future, the Department should consider adopting all changes to the CFPB rule in its own rule to offset the possibility that the regulatory regimes grow more divergent over time to minimize confusion and burden and to maintain consistency in reporting.

In addition, we respectfully request that if the NYDFS proceeds in finalizing any future rule that diverges from section 1071, the NYDFS should clarify how the data collected as part of the new proposal would be used as part of the CRA evaluation process. Because many major lenders operating in New York state would not be covered by the NYDFS proposal, statistical benchmarking against the aggregate would appear to be impossible, which would make it more difficult for the NYDFS to assess impact. Furthermore, if the NYDFS were to collect different data from what is required under section 1071, the NYDFS would not be able to benchmark or compare against the aggregate with respect to that data.

Accordingly, we urge the NYDFS to delay this rulemaking until the Section 1071 rules are finalized. In addition, we ask that the NYDFS specifically provide that compliance with the CFPB’s rule promulgated under Section 1071 of the Dodd-Frank Act is sufficient to meet the Department’s requirements, consistent with the proposed NYDFS regulatory amendments, which themselves contemplate that a banking institution’s compliance with rules promulgated pursuant to section 1071 would constitute compliance for purposes of the NYDFS requirements.⁸

If you have any questions, please contact the undersigned by phone at 703-887-5229 or by email at paige.paridon@bpi.com.

Sincerely,



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⁸ Proposed 3 NYCRR § 76.6(g)(1).